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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

SERVIDORES PUBLICOS UNIDOS, COUNCIL
95 OF THE AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES; SANDRA PACHECO
SANTIAGO; CARLOS REYES CASTRO; and
MIGUEL ANGEL ORTIZ RAMOS,

Plaintiffs,

v.

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO;
MEMBERS OF THE FINANCIAL OVERSIGHT
AND MANAGEMENT BOARD FOR PUERTO
RICO, including Jose B. Carrion III, Andrew G.
Biggs, Carlos M. Garcia, Arthur J. Gonzalez, Jose
R. Gonzalez, Ana J. Matosantos, David A. Skeel,
and Elias Sanchez, in their official capacity as the
appointed members and ex officio member of the
Financial Oversight and Management Board for
Puerto Rico; the COMMONWEALTH OF
PUERTO RICO; and RICARDO ANTONIO
ROSSELLO NEVARES, in his official capacity as
the Governor of the Commonwealth of Puerto Rico

Defendants.

Civil Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF
(28 U.S.C. §§ 2201 & 2202; 29 U.S.C. § 1983)**

Plaintiffs SERVIDORES PUBLICOS UNIDOS, COUNCIL 95 OF THE AMERICAN
FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (“SPU”); SANDRA
PACHECO SANTIAGO; CARLOS REYES CASTRO; and MIGUEL ANGEL ORTIZ RAMOS,
 (“Plaintiffs”) hereby allege as follows:

I. INTRODUCTION

1. This action is brought to protect Plaintiffs’ fundamental rights as established in three
foundational documents designed to restrain the exercise of unbridled authority over the Puerto Rican
people—the United States Constitution, the Puerto Rico Commonwealth Constitution, and the Puerto
Rico Oversight, Management, and Economic Stability Act (“PROMESA” or “the Act”), Public Law
114-187, 48 USC § 2101, *et seq.* The relief sought herein is further authorized by the Civil Rights
Act of 1871, 42 U.S.C. § 1983.

1 2. Plaintiffs SPU, an employee organization (or labor union) as that term is defined under
2 Puerto Rico Commonwealth law, and certain named individual SPU members, including both active
3 and retired employees of the Commonwealth (together, “Plaintiffs”), bring this action against the
4 Commonwealth of Puerto Rico (“Commonwealth”), Governor RICARDO ANTONIO ROSSELLO
5 NEVARES of Puerto Rico acting in his official capacity (“Governor”), and the FINANCIAL
6 OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO and its members acting in
7 their official capacity (“Oversight Board”).

8 3. Plaintiffs complain that the purported approval and certification of a Fiscal Plan, as
9 defined by PROMESA, for Puerto Rico on March 13, 2017 (the “Final Fiscal Plan”) not only violated
10 PROMESA itself, both procedurally and substantively, but also requires the Commonwealth to
11 unconstitutionally (a) impair contractual rights to vested and already-accrued pension benefits that
12 were earned by completed performance of employment services for the Commonwealth, and (b) take
13 employees’ individual retirement savings accounts funded solely and directly by the employees’ own
14 wage deductions and fixed investment gains thereon.

15 4. By requiring the Commonwealth to reduce retirees’ and employees’ earned and vested
16 retirement income security, the Final Fiscal Plan contravenes the clearly-stated requirement that any
17 Fiscal Plan adopted under PROMESA must “provide adequate funding for public pension systems”
18 per section 201(b)(1)(C) of PROMESA, an obligation also imposed by the Commonwealth and U.S.
19 Constitutions.

20 5. When providing for the creation of the Oversight Board to manage the financial affairs
21 of Puerto Rico, Congress crafted PROMESA to strike a careful balance between the popular will of
22 the Puerto Rican people as expressed through their democratically-elected representatives, and the
23 territorial powers of Congress. In doing so, Congress granted significant authority to the Oversight
24 Board while constraining that authority both in terms of the procedure by which Fiscal Plans are
25 developed and by placing constraints on the substance of such Fiscal Plans. This balance was
26 intended to protect stakeholders but primarily the people of Puerto Rico, who are entitled to a
27 functioning government that can provide essential services and safety, and which includes thousands
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1 of citizens who are the employees of the government tasked with this challenging and urgent
2 obligation.

3 6. Perhaps the clearest manifestation of this careful congressional balancing is the
4 process for settling on the Fiscal Plan which, once certified, serves as a financial roadmap for the
5 Commonwealth as it steers itself towards financial recovery. For this reason, PROMESA provides
6 the Oversight Board with two, *and only two*, paths to attaining a Fiscal Plan: the Oversight Board
7 must either (a) exercise “its sole discretion” to approve as-is a Fiscal Plan developed by the
8 democratically-elected Governor, or (b) develop its own Fiscal Plan, but subject to *de novo* review of
9 whether the Fiscal Plan complies with the requirements of Section 201(b) of PROMESA.

10 7. Unfortunately, the Oversight Board did neither, but instead charted an unauthorized,
11 dangerous and uncertain path for the Commonwealth by departing from PROMESA’s procedural and
12 substantive requirements. The Oversight Board opted to declare it had “approved” the
13 democratically-elected Governor’s Fiscal Plan in an “amended” form, even though PROMESA
14 provides no authority to the Oversight Board to do so. The amendments imposed on the Governor’s
15 Fiscal Plan provide for additional, and steep, cuts to public employee wages and benefits, and
16 additional cuts to constitutionally-protected vested retirement benefits.

17 8. It must be noted that the Governor is accountable to the People of Puerto Rico as
18 decreed by their Commonwealth Constitution, whereas the Oversight Board is not. For this reason,
19 PROMESA sets forth different procedures with respect to review of Fiscal Plans devised by the
20 Governor and those devised by the Oversight Board, permitting greater scrutiny over Fiscal Plans
21 devised by the Oversight Board. Upon information and belief, this was the motivation for the
22 Oversight Board’s departure from PROMESA’s procedures when it declared that it was approving
23 and certifying the Governor’s proposed Fiscal Plan pursuant to PROMESA Section 201(e), but
24 subject to its own amendments while simultaneously neglecting to specify, as required by
25 PROMESA, whether the approval and certification occurred pursuant to Section 201(e)(1) (entitled
26 “Approval of Fiscal Plan Developed by the Governor”) or Section 201(e)(2) (entitled “Deemed
27 Approval of Fiscal Plan Developed by Oversight Board”).
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1 9. The unconstitutional impairment and taking of retirement benefits alleged herein, and
2 its effectuation by the PROMESA-violating Final Fiscal Plan, was occasioned by the acts of
3 Defendant Governor, the members of the Oversight Board, and their agents or subordinates acting
4 under official authority.

5 10. Plaintiffs are, or represent, active and retired public servants of Puerto Rico. Plaintiffs
6 are invested in the Commonwealth's financial recovery and desire, above all else, for it to thrive (and
7 certainly more than many of those to whom the Commonwealth allegedly owes other financial debts).

8 11. It must be stated clearly that the relief sought by Plaintiffs is narrow and modest.
9 Plaintiffs seek only a declaration that the Final Fiscal Plan is unlawful and, as explained below, seek
10 to enjoin its implementation including its use as a basis for the Commonwealth's annual budget and
11 as a means to invoke Title III of PROMESA, which authorizes bankruptcy protection for the
12 Commonwealth under the terms of a Fiscal Plan. Plaintiffs do not seek to stall the Commonwealth's
13 economic recovery, and such an order would not prevent or prohibit the Governor or the Oversight
14 Board from certifying *a different* Fiscal Plan.

15 12. Indeed, Plaintiffs seek to avoid the harm of protracted litigation and the cloud of
16 uncertainty that would follow any effort to implement the Final Fiscal Plan, including its serving as
17 the precondition to seeking bankruptcy protection under Title III of PROMESA. As stated below, the
18 Final Fiscal Plan violates Plaintiffs' rights under the U.S. Constitution, Commonwealth Constitution,
19 and PROMESA itself by purporting to reduce accrued retirement benefits that employees of the
20 Commonwealth have earned and funded by dedicating their productive lives to serving the
21 Commonwealth and its people. Congress recognized this fact when it enacted PROMESA and
22 specifically required any Fiscal Plan to adequately fund the Commonwealth's pension systems, an
23 obligation the Final Fiscal Plan ignores.

24 13. The Commonwealth's current and future retirees are not rich and will not become rich
25 because of their pensions. To the contrary, many of them will suffer grievous harm from the cuts
26 promised by the Final Fiscal Plan, which threatens to plunge them to the Federal Poverty Line, if it is
27 permitted to be implemented, and are already suffering injury grappling with the cuts that the Final
28 Fiscal Plan promises.

1 14. For these reasons, Plaintiffs are compelled to challenge the illegality of the Final
2 Fiscal Plan now, before Defendants attempt—as they imminently will—to rely on the Final Fiscal
3 Plan as the precondition for a Commonwealth bankruptcy petition and eventual plan of debt
4 adjustment under Title III of PROMESA. In addition to the harms caused by the Final Fiscal Plan to
5 Plaintiffs now, allowing the Commonwealth to move forward under it will create uncertainty and the
6 likely prospect that its implementation will not be sustained once this case reaches its conclusion.
7 Such an outcome benefits neither Plaintiffs, Defendants nor the Commonwealth and its people.

8 15. Accordingly, Plaintiffs seek declaratory and injunctive relief that Defendants’
9 development, approval, and certification of the Final Fiscal Plan constitutes an impairment of
10 contract in violation of Article I, Section 10 of the United States’ Constitution (“U.S. Contracts
11 Clause”); a taking without due process or just compensation in violation of Amendment 5 of the
12 United States Constitution (“Fifth Amendment”); an impairment of contract in violation of Article II,
13 Section 7 of the Puerto Rico Constitution (“Puerto Rico Contract Clause”); a deprivation of property
14 without due process in violation of Article II, Section 7 of the Puerto Rico Constitution (“Puerto Rico
15 Due Process Clause”); a taking of property without just compensation in violation of Article II,
16 Section 9 of the Puerto Rico Constitution (“Puerto Rico Takings Clause”); a violation of the
17 requirement, set forth in section 201 of PROMESA at 48 U.S.C. § 2141(b)(1)(C), that an approved
18 Fiscal Plan “provide adequate funding for public pension systems”; and a violation of the Fiscal Plan
19 approval and certification procedures set forth in Section 201 of PROMESA at 48 U.S.C. § 2141(c-
20 e).

21 16. Above all, because a Fiscal Plan for Puerto Rico is both a precondition of, and the
22 governing document for, any future bankruptcy filing by the Commonwealth under Title III of
23 PROMESA—a bankruptcy filing which is both imminent and which would automatically stay this
24 Complaint—allowing the illegal Final Fiscal Plan to remain in effect, and thereby effectuate the
25 violation of Plaintiffs’ constitutional rights while simultaneously contravening the terms of
26 PROMESA, threatens Plaintiffs with imminent, irreparable and irreversible harm.

II. JURISDICTION

17. This United States District Court has original subject matter jurisdiction under 28 U.S.C. § 1331, as this matter arises under the Constitution of the United States, namely the U.S. Contracts Clause and Fifth Amendment, US Const. Art. I, § 10, and Amend. V, respectively.

18. Jurisdiction is also proper and authorized under PROMESA, specifically 48 U.S.C. § 106, because this action is brought against an Oversight Board established under the Act and arises out of a “Fiscal Plan” as defined by 48 U.S.C. § 2104(10). Plaintiffs also seek relief pursuant to 42 U.S.C. § 1983, as the Individual Defendants as herein defined, acting under the color of law, have deprived Plaintiffs of rights guaranteed by both the United States Constitution and by PROMESA.

19. This Court has supplemental subject matter jurisdiction under 28 U.S.C. § 1367(a) over Plaintiffs’ claims arising under the Puerto Rico Constitution, because those claims form part of the same case and controversy and involve identical factual allegations as Plaintiffs’ claims arising under the United States Constitution and PROMESA.

20. The Court is authorized to provide declaratory relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, and issue injunctive relief pursuant to Fed. R. Civ. Procedure 65.

21. Venue in this District Court is appropriate because a substantial part of the events giving rise to the claim occurred in Puerto Rico, and because Plaintiffs’ unconstitutionally-taken property is situated in Puerto Rico. Further, 48 U.S.C. § 2126 obligates the filing of this suit in the District of Puerto Rico.

III. THE PARTIES

22. Plaintiff SERVIDORES PUBLICOS UNIDOS, COUNCIL 95 OF THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (“SPU”) is a membership association and a recognized labor union within the meaning of Puerto Rico law, 3 L.P.R.A. § 1451a(v). Specifically, it is the recognized exclusive collective bargaining representative of multiple bargaining units of employees employed by the Commonwealth, within the meaning of the Puerto Rico Public Service Labor Relations Act, Act 45 of 1998, as amended, 3 L.P.R.A. § 1451, *et seq.* (“Law 45”). SPU represents over ten thousand employees of the Commonwealth affected by the Final Fiscal plan. SPU also admits to membership and represents Commonwealth retirees through

1 SPU's retiree chapter, which includes retirees receiving benefits from the Employees Retirement
2 System ("ERS"), including some who were not represented by SPU during their active employment
3 but have joined the Retiree Chapter since. SPU's Retiree Chapter currently represents approximately
4 2,300 retired employees. SPU's Retiree Chapter members receive a pension from the
5 Commonwealth's pension system in the form of twice-monthly annuity checks, from which SPU
6 Retiree Chapter dues are voluntarily deducted.

7 23. Plaintiff SPU sues in its capacity as a membership organization on behalf of, and in its
8 capacity as a representative of, its members, both active and retired, who are affected by the
9 impairment, taking, and statutory violations of which Plaintiffs complain.

10 24. Plaintiff Sandra Pacheco Santiago has been an active employee of the Commonwealth
11 Department of Transportation and Public Works, hired as an office clerical assistant. She is a
12 member of SPU and President of SPU Local 3889, which represents her Department's in-office
13 employees. Her gross monthly salary is \$1,985—for net monthly take-home pay of \$1,178.61 after
14 all deductions—which she uses to support not only herself and her retired husband (both of whom
15 suffer from diabetes, hypertension, and high blood pressure), but also to help provide financial
16 assistance to her four children and seven grandchildren. Until July 1, 2013—the effective date of Act
17 3 of 1999—she accrued a right to a defined benefit pension under the terms set forth in Act 1 of 1990.
18 Since July 1, 2013, the Commonwealth has deducted a portion of her wages as the sole funding
19 source for her defined contribution individual retirement account administered by ERS.

20 25. Plaintiff Miguel Angel Ortiz Ramos worked for the Commonwealth Police
21 Department from 1976 until 2009. He is now retired and a member of SPU's Retiree Chapter. In
22 exchange for his career of service as a police officer, he was promised a defined benefit pension by
23 Act 447 of 1951. He currently receives his promised pension by way of two checks monthly,
24 together totaling gross income of \$2,470.84 per month, \$274 of which is then automatically deducted
25 to pay for health insurance. This constitutes his entire retirement income—because he spent his
26 career as a police officer, he was not eligible for Social Security—and with it he must support himself
27 and his wife, who has neither regular employment nor receives retirement benefits. His fear of the
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1 pension cuts promised by the Oversight Board in the Final Fiscal Plan has led him to look for work,
2 but he has not been able to find employment in the work force.

3 26. Plaintiff Carlos Reyes Castro is a veteran of the United States Army who, following
4 his military service to his country and his graduation from the University of Puerto Rico, worked for
5 the Commonwealth Department of Commerce from 1976-1979 and then for the Commonwealth's
6 Tourism Company until 1999, rising to the rank of Comptroller. At the public Tourism Company, he
7 was chiefly responsible for managing the Company's budgetary appropriations, working closely with
8 the Legislature. In exchange for his career of public service, he was promised a defined benefit
9 pension by Act 447 of 1951. He currently receives his promised pension by way of two checks
10 monthly, together totaling gross income of \$2,459.06 per month, a significant portion of which is
11 reduced to pay back loans made to him via ERS—a scenario true for many ERS retirees. In total, of
12 his \$29,808.72 in gross annual pension salary, \$9,531.36 was automatically deducted by ERS to
13 make his loan payments, yielding an annual take home pension benefit of \$20,277.36. A portion of
14 that benefit is attributable to his military service. He is married and has 3 children, 4 grandchildren,
15 and 2-step grandchildren. His wife is fully disabled, suffering from Parkinson's disease, diabetes,
16 high blood pressure, and hypertension, each of which requires costly medical care. He fears that the
17 pension cut promises made by the Oversight Board in the Final Fiscal Plan will be disastrous for him
18 and his family, especially as his wife's condition continues to worsen. He cannot return to work to
19 supplement his income due to the support she requires, and, regardless, at age 71 his job prospects are
20 slim in a struggling Commonwealth economy.

21 27. Defendant RICARDO ANTONIO ROSSELLO NEVARES is sued in his official
22 capacity as the Governor of the Commonwealth of Puerto Rico ("Governor"). Defendant Governor
23 submitted to the Oversight Board a proposed Fiscal Plan on March 13, 2017, which, both by its own
24 terms but especially as having been purportedly approved and certified as amended by the Oversight
25 Board, impairs Plaintiffs' contractual rights, provides for the taking of their property, and violates
26 PROMESA. The Governor is charged with implementing the Final Fiscal Plan in his capacity as the
27 executive of the Commonwealth, including providing for the implementation of the Final Fiscal Plan
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1 in the Commonwealth's annual budgets. In doing so, the Governor, and his subordinates, act under
2 color of law.

3 28. Defendants the MEMBERS OF THE FINANCIAL OVERSIGHT AND
4 MANAGEMENT BOARD FOR PUERTO RICO ("Oversight Board") currently include Jose B.
5 Carrion III, Andrew G. Biggs, Carlos M. Garcia, Arthur J. Gonzalez, Jose R. Gonzalez, Ana J.
6 Matosantos, David A. Skeel, and Elias Sanchez, each of whom is sued in his/her official capacity as a
7 member of the Board (together with Defendant Governor, the "Individual Defendants"). The
8 members of the Oversight Board and their subordinates, acting under color of law, purported to
9 develop, approve, and certify the Final Fiscal Plan, which impairs Plaintiffs' contract rights, takes
10 their property, and violates the processes and requirements of PROMESA. Pursuant to Section
11 101(c) of PROMESA, 48 U.S.C. § 2121(c), the Oversight Board is a Commonwealth government
12 entity and therefore the Oversight Board members are officers of the Commonwealth.

13 29. Defendant THE COMMONWEALTH OF PUERTO RICO ("Commonwealth") is a
14 territory of the United States. PROMESA section 106 authorizes this action and further requires all
15 actions "arising out of" PROMESA involving Puerto Rico to be brought in this United States District
16 Court. The Commonwealth is a proper defendant and subject to the jurisdiction of this Court, as this
17 claim arises out actions taken by the Commonwealth ostensibly under PROMESA.

18 30. Defendant THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR
19 PUERTO RICO ("Oversight Board") is an entity within the Commonwealth government as set forth
20 at 48 U.S.C. § 2121(c)(1).

21 31. The Individual Defendants are Commonwealth officers acting under color of law—
22 both Commonwealth law and PROMESA, among others.

23 32. All Defendants herein are collectively referred to as "Defendants."

24 **IV. FACTUAL ALLEGATIONS**

25 **A. THE RETIREMENT BENEFITS**

26 33. Under Commonwealth law, pension benefits offered and provided to Commonwealth
27 employees are vested rights protected under the Article II, Section 7 of the Constitution of Puerto
28 Rico ("Commonwealth Contracts Clause"). The basis for the SPU members' and the Individual

1 Plaintiffs' rights are the statutes providing for the pension benefits and the performance of service by
2 Commonwealth employees working under such statutes.

3 34. Here, the Individual Plaintiffs' retirement benefits derive from promises made by the
4 Commonwealth by multiple succeeding statutes, beginning in 1951 under Act 447, which established
5 the Employees Retirement System ("ERS") effective January 1, 1952, and since amended.

6 *The Commonwealth's Defined Benefit Plan – Act 447 and Act 1*

7 35. At its inception, Act 447 covered all full-time employees of the Commonwealth
8 Government and its instrumentalities, making membership in the system a mandatory condition of
9 employment. In addition to specific provisions governing disability and occupational death annuities
10 (Sections 9-12), Act 447 provided, *inter alia*, that as of January 1, 1955, a member of ERS "shall be
11 entitled to receive" an annuity upon retirement based on a multiplier of 1.5%, average salary, and
12 years of service, with certain adjustments; retirement benefits were available upon separation from
13 and completion of 25 years of service and reaching an age of at least 55 years, or 10 years of service
14 with an age of at least 58 years (Section 6-7). Payment of benefits became mandatory at age 65 for
15 all employees (*Id.*). ERS was created as a trust (Section 15) in which employees make mandatory
16 contributions that are directly deducted from their earned wages, at the rate of 6% for police and fire
17 fighters and 5.5% for all other members.

18 36. Act 447 clearly recognizes the vested contractual right to retirement benefits that
19 employees accrue through their service to the Commonwealth. For example, Act 447 states the
20 retirement and disability annuities earned "shall be payable in equal monthly installments as life
21 annuities, and shall not be increased, decreased, revoked or repealed" (Section 25) and "shall
22 constitute obligations of the employer" (Section 26).

23 37. Further, the Act specifically defines the retirement benefits in contractual terms and as
24 a vested contractual right, providing "that every employee who is a member of the System consents
25 and agrees to the [mandatory wage] deductions . . . and in consideration of such consent and
26 agreement, each member shall obtain a vested interest in the contributions made by him" (Section
27 20). Act 447 also requires employer contributions to be "sufficient to provide" the promised benefits
28 (Section 21). Further recognizing that retirement annuities, once earned, constitute vested rights, Act

1 447 provides that any member not eligible for a retirement annuity “shall be paid . . . a refund equal
2 to the amount of his contributions to the System, including regular interest” and “shall thereby forfeit
3 and waive all *accrued rights* in the System” (Section 14, emphasis added).

4 38. Act 447 has been amended several times since 1951, each time preserving the benefits
5 theretofore earned by employees and retirees. For purposes of this Complaint, three amendments are
6 most pertinent: Act 1 of 1990 (“Act 1”), Act 305 of 1999 (“Act 305” or “Reform 2000”), and Act 3
7 of 2013 (“Act 3”).

8 39. The benefits of so-called “Act 447 members”—members hired prior to April 1, 1990,
9 the effective date of Act 1—were, until Act 3 took effect in 2013, accrued as traditional defined
10 benefit pensions (“DB Pensions”). Such a benefit provides for a guaranteed retirement annuity
11 benefit calculated by multiplying the retiree’s years of service under the plan by his/her average
12 annual compensation and by a fixed multiplier (and then adjusting to account for certain other
13 factors, e.g., mandatory minimum or maximum pension amounts). The product of these factors is
14 divided by twelve to reach the monthly retirement annuity benefit.

15 40. Benefits provided under Act 447 applied to all Commonwealth employees until the
16 effective date of Act 1, which left in place the benefits for incumbent employees and retirees under
17 Act 447 but created a new (lower) “tier” of DB Pension benefits for Commonwealth employees hired
18 on or after Act 1’s effective date. ERS internally refers to members hired between April 1, 1990 and
19 December 31, 1999 -- and therefore whose benefits are defined with reference to the Act 1 tier of
20 benefits -- as “Act 1 members.”

21 41. Although Act 1 made significant changes to the traditional defined benefit accrual
22 formula for Act 1 members, *i.e.* new employees hired as of April 1, 1990, the benefits earned and
23 accrued by Act 1 members were still to be accrued as DB Pensions and provided for a defined benefit
24 upon retirement.

25 42. As noted, Act 1 implemented a reduced benefit tier for new hires, but it also increased
26 both the employer’s and employee’s contributions into the pension system trust fund. Act 1’s
27 Statement of Motives noted that although Act 447 members would also see an increase in their
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1 employee contributions “from 7% to 8.275% of [their] salary” going forward, their already-accrued
 2 vested benefits would not be affected, as

3 “they will keep all their rights under the Retirement Act in force, with the
 4 certainty that the System will have the necessary resources for the payment
 5 thereof. Therefore, as of the date of the approval of this Act, the employees shall
 6 have the same benefits to which they are entitled now, upon their retirement that
 is, the benefits they will receive will not be affected in the least.”

7 The Commonwealth’s “Reform 2000”

8 43. Ten years later, the Commonwealth enacted Act 305 of 1999, known as Reform 2000,
 9 which adopted an entirely different (but still mandatory) type of pension system for employees hired
 10 on or after its effective date of January 1, 2000. Under Reform 2000, the Commonwealth established
 11 individual employee retirement savings accounts (“System 2000 RSAs”) in lieu of the DB Pensions
 12 described above. Employees covered only by Reform 2000 are referred to as “System 2000
 13 members” by ERS.

14 44. A small number of Act 447 and Act 1 members elected to voluntarily transfer their DB
 15 Pension benefits into a System 2000 RSA under a program permitting such a voluntary transfer
 16 established by Reform 2000. Act 305 set forth the formula for converting such members’ accrued
 17 DB Pension entitlement under the DB Pension Plan into a System 2000 RSA cash balance.

18 45. Act 305 provided that each and every System 2000 participant “shall always have one
 19 hundred percent (100%) vested rights” to the entire value of her RSA, which value consisted of the
 20 employee’s own contributions from her wages to her RSA, plus the investment yield (subject to a
 21 minimum floor yield) on the RSA account balance for each semester of the fiscal year based on an
 22 investment alternative elected by the participant (Section 30), plus any initial RSA transfer balance as
 23 to the few employees who voluntarily transferred from the DB plan.

24 46. ERS provided for three investment options in which employees could choose to invest
 25 in increments of ten percent of their total account balance: (1) fixed income (yield equal to the
 26 average monthly yield of the two-year constant maturity treasuries during each semester of the fiscal
 27 year), (2) 75% of the net yield of the investment portfolio of ERS during each semester of the fiscal
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1 year (later raised to 90% by statute effective July 1, 2004), or (3) other alternatives adopted by the
2 ERS Board.

3 47. Reform 2000 provided that the “interest of any participant in the Program shall not
4 constitute a security for the purposes of . . . the Uniform Securities Act.”

5 48. In other words, System 2000 established a cash balance plan funded purely by
6 employees who directly contributed to their cash balance accounts from their wages, and who thereby
7 had a 100% vested right in their account balance at all times. Neither the Commonwealth nor other
8 ERS-participating employers (e.g., municipalities) contributed to System 2000. Rather employees’
9 account balances were funded by their own individual contributions from earned wages. Such
10 accounts are employees’ property.

11 49. Although, for investment purposes, ERS commingled employees’ accounts with all
12 other trust funds, it employed accounting measures to maintain each employee’s RSA balance,
13 including attributing any gains earned by the employees due to the actual investment earning or
14 minimum investment guarantee. System 2000 further provided (Section 28) that the “right to
15 retirement or disability annuities, death benefits, or any other benefits pursuant to the provisions of
16 this Act, regardless of their designation, is a personal right of the recipient thereof.”

17 50. Pursuant to Act 296 of 2004, a retiring member could elect to receive her System 2000
18 benefit as a lump sum payment or have it converted to an annuity.

19 51. Upon information and belief, ERS issued or made available to System 2000
20 participants statements indicating their individual account balances and earnings.

21 52. Upon information and belief, System 2000 participants employed by the
22 Commonwealth received on their wage statements (or paystubs) a notification of the amount of their
23 wages contributed (mandatorily) to their RSAs.

24 Act 3’s Defined Contribution Hybrid Contribution Account

25 53. In 2013, the Commonwealth yet again amended the terms of its pension and
26 retirement plans through Act 3 of 2013, the effect of which was to establish individual defined
27 contribution accounts (“DC Plan Accounts”) for all existing and future Commonwealth employees.
28 Under Act 3, all employees hired before System 2000 who had remained in the DB Pension plans

1 authorized by Act 447 and Act 1 ceased earning additional service credits under the DB Pension
 2 plans (Section 17) and were enrolled in a going-forward basis in DC Plan Accounts similar to a
 3 System 2000 RSA. In pension parlance, this means the DB Pension plans were “frozen” as of July 1,
 4 2013, and members of such plans were enrolled going-forward in Act 3’s defined contribution
 5 system.

6 54. Act 3, in freezing DB Pension benefits but preserving the vested right to those pension
 7 benefits already accrued through work already performed, constituted a recognition of the
 8 inviolability of those already-accrued vested benefits. As stated in Act 3’s Statement of Motives:

9 [I]t must be clear that the benefits accrued by active public employees
 10 under the laws that covered them up to the effective day of this Act, shall
 11 subsist and shall be paid in accordance with the provisions of said laws.
 12 Therefore, at the time of their retirement, public employees participating
 13 in the programs established under Act No. 447 and Act No. 1 shall receive
 14 an annuity which shall combine: (i) the annuity resulting from the benefits
 15 they have accrued under the program in which they participated, as of the
 16 effective date of this Act, plus (ii) the annuity that they may acquire with
 17 what is accrued under the new defined contribution hybrid plan from the
 18 present to the time of their retirement.

19 Likewise, Act 3 provided that “Benefits of System Participants, under this Act, who retire on or
 20 before June 30, 2013 shall not be modified” and “[t]he right of every participant who, as of June 30,
 21 2013 was eligible to receive a deferred pension for meeting all the requirements thereof, to receive
 22 such pension regardless of whether he/she has applied therefor, is hereby preserved.”

23 55. Act 3 also transferred each individual System 2000 participant’s RSA balance into a
 24 corresponding DC Plan Account established for that purpose, and to which the employee would make
 25 all future contributions deducted from wages. Further, it eliminated the lump sum retirement option
 26 and provided that the new DC Plan would provide only an annuity retirement option, at which point
 27 the DC Plan Account “shall cease to exist” (Section 17).

28 56. Under the DC Plan, each member has a “nonforfeitable” right to their contributions to
 the DC Plan and, with respect to System 2000 members’ conversion, a “nonforfeitable” right to their
 RSA account balances. For all employees, Act 3 increased employees’ contributions to their
 retirement accounts to 10% of their compensation (Section 19) while continuing to provide for no

1 employer contributions (with limited exceptions to this rule for certain employees participating in,
2 and coordinating their benefits with, Social Security).

3 57. Act 3's Statement of Motives declared in unambiguous terms that it "honors and
4 validates the accrued benefits of pensioners, whose accrued benefits shall not be affected, and those
5 of active public employees that continue contributing to the System."

6 58. The central difference between a System 2000 RSA and an Act 3 DC Plan Account
7 was that the DC Plan Account offered only one investment option. Like System 2000, DC Plan
8 Accounts are credited with a return on investment, but that return was to be "determined by the
9 [ERS] Board and shall never be less than eighty percent (80%) of the System's portfolio net rate of
10 return during each semester of each fiscal year." ERS earned an annual rate of return, on a gross
11 asset basis, of 8.46% in the plan year ending June 30, 2014 and 3.49% in the plan year ending June
12 30, 2015 (the first two years of Act 3 accruals). Act 3 also stated that DC Plan "participants shall
13 always have one hundred percent (100%) right over the initial balance transfer . . . and their
14 contributions to the Hybrid Program accounts" (Section 22).

15 59. Commonwealth courts have repeatedly held that benefits earned under ERS, such as
16 under the DB Pension Plan and System 2000, constitute proprietary interests and vested contractual
17 rights protected from impairment by the Constitution of Puerto Rico.

18 60. Subsequent to Act 3, the Commonwealth passed Act 244 of 2014, which promised
19 (Section 2) that in subsequent fiscal years, ERS would receive an Additional Uniform Contribution in
20 the amount certified by the external actuary of the System as necessary to avoid having the projected
21 gross assets of ERS, during any subsequent fiscal year, fall below \$1 billion.

22 **B. PROMESA AND THE FISCAL PLAN**

23 61. On May 18, 2016, United States Representative Sean Duffy (R-WI) introduced the
24 Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) in the United States
25 House of Representative as H.R. 5278. PROMESA was referred to the House Committee on Natural
26 Resources.

27 62. The Committee on Natural Resources met in open session on Tuesday, May 24, 2016
28 and Wednesday, May 25, 2016 to markup PROMESA.

1 63. On June 29, 2016, President Obama signed PROMESA, as amended, into law as
2 Public Law 114-187.

3 64. Broadly speaking and as relevant here, PROMESA establishes an Oversight Board for
4 Puerto Rico (Title I); sets forth a process for the Oversight Board to approve a Fiscal Plan governing
5 the territory's future finances and budgets (Title II); provides a process for the territory to declare
6 bankruptcy if necessary (Title III); and provides an alternative mechanism for adjusting the territory's
7 bond debt without declaring bankruptcy (Title VI).

8 65. Although it applies to all United States Territories, PROMESA was drafted with
9 Puerto Rico and its current fiscal condition specifically in mind, as reflected by the fact that it creates
10 an Oversight Board explicitly for Puerto Rico but for no other territory.

11 66. The basic purpose of PROMESA is to provide federal territories, and especially Puerto
12 Rico, with the tools to address a financial crisis under the supervision of an "Oversight Board" and
13 subject to specific constraints and protections.

14 67. The heart of PROMESA is the Fiscal Plan, which provides the territory with a
15 financial roadmap, approved by the Oversight Board, to govern territory finances for at least five
16 years.

17 68. Where, as here, the territory is saddled with extreme amounts of bond debt, Title VI
18 provides a mechanism for lawfully adjusting the terms of that debt through a process that includes
19 mandatory participation by the holders of the bond claims. If the Title VI process fails, Title III
20 provides the territory with the authority to seek bankruptcy protection, but only after obtaining a
21 Fiscal Plan and subject to the condition that any plan of reorganization that emerges from the
22 bankruptcy case must comply with the Fiscal Plan.

23 69. Critically, the Fiscal Plan, as the core governing document for a territory both in and
24 out of bankruptcy, has a specific set of requirements and constraints including, pertinent here, the
25 requirement that the territory's public pension systems be adequately funded.

26 70. Title I of PROMESA, 48 U.S.C. § 2121 *et seq.*, establishes an Oversight Board for
27 Puerto Rico. The Oversight Board is defined as an entity within the territorial government, although
28 the President of the United States appoints its seven members. The Oversight Board is given

1 discretion to review and then approve or reject proposed Fiscal Plans offered by the Governor on
 2 behalf of the Commonwealth. It also permits the Oversight Board to establish its own Fiscal Plan if
 3 it rejects the Governor's proposal -- even following revisions made by the Governor after
 4 consultation with the Oversight Board -- if the Board determines the Governor's plan does not meet
 5 the Fiscal Plan Requirements set forth by PROMESA. Ultimately, the Oversight Board is given the
 6 responsibility to "certify" a Fiscal Plan that is proposed by the Governor or that it has developed
 7 following rejection of the Governor's, which certification is a precondition for such a plan to go into
 8 effect.

9 71. Although an Oversight Board established under Title I is given significant authority,
 10 that authority is not unrestricted, as set forth in Title II of PROMESA, entitled "RESPONSIBILITIES
 11 OF THE OVERSIGHT BOARD," at 48 U.S.C. § 2141, *et seq.*

12 72. Within Title II, PROMESA Section 201(b) sets forth a number of "requirements" for
 13 any Fiscal Plan including, pertinent here, that plans "provide adequate funding for public pension
 14 systems" (the "Adequate Pension Funding Requirement").

15 73. As alleged herein, all Defendants failed to adhere to this requirement in purporting to
 16 develop, review, approve and/or certify the Final Fiscal Plan.

17 74. The meaning of the Adequate Pension Funding Requirement is clear on its face:
 18 earned pension benefits owed by a pension system must be adequately funded under a Fiscal Plan to a
 19 degree that is adequate to support them. This is also apparent from PROMESA's legislative history.
 20 At the Committee on Natural Resources markup of PROMESA, Representative Fleming (R-AZ)
 21 offered Amendment Number 92, which would have amended the Adequate Pension Funding
 22 Requirement to read as follows: "provide adequate funding, or other reasonable alternatives, to
 23 satisfy contribution liabilities to public pension systems, but solely to the extent that such
 24 contributions are due under the terms of the applicable pension plan (*as may be restructured pursuant*
 25 *to this Act*) in the fiscal years covered by a Fiscal Plan" (emphasis added). Representative Fleming's
 26 Amendment Number 92 was rejected by a voice vote of the Committee, leaving the Adequate
 27 Pensioning Funding Requirement in place as originally drafted.
 28

1 75. There are two methods by which PROMESA allows a Fiscal Plan to be certified by
2 the Oversight Board: (1) certifying the Governor’s proposed Fiscal Plan as-is, or (2) developing and
3 certifying its own Fiscal Plan following rejection of the Governor’s Fiscal Plan.

4 76. More specifically, Section 201(c) of PROMESA sets forth procedures for the
5 “Development, Review, Approval, and Certification of Fiscal Plans.” First, the Governor is charged
6 with developing a “proposed Fiscal Plan” (Section 201(c)(2)) which must be reviewed by the
7 Oversight Board. In reviewing a proposed Fiscal Plan, the Oversight Board must review it “to
8 determine whether it satisfies the requirements set forth in subsection (b) [of Section 201],” which
9 includes the Adequate Pension Funding Requirement. Upon review, the Oversight Board is charged
10 with either accepting or rejecting the Governor’s proposed Fiscal Plan. Specifically, if the Oversight
11 Board “determines in its sole discretion that the Proposed Fiscal Plan . . . satisfies such requirements,
12 the Oversight Board shall approve the proposed Fiscal Plan,” but if the Oversight Board “determines
13 in its sole discretion that the proposed Fiscal Plan . . . does not satisfy such requirements, the
14 Oversight Board shall provide to the Governor . . . an opportunity to correct the violation.”

15 77. In the event the initial Fiscal Plan proposed by the Governor is not certified under
16 Section 201(c), Section 201(d) sets forth procedures for submission by the Governor of a “Revised
17 Fiscal Plan.” First, as set forth at Section 201(d)(1), the Governor is charged with submitting a
18 Revised Fiscal Plan to the Oversight Board following receipt of a “notice of violation” from the
19 Oversight Board.

20 78. As set forth at Section 201(d)(2), “[i]f the Governor fails to submit to the Oversight
21 Board a Fiscal Plan that the Oversight Board determines in its sole discretion satisfies the
22 requirements set forth in subsection (b) [of Section 201]. . . the Oversight Board shall develop and
23 submit to the Governor and the Legislature a Fiscal Plan that satisfies the requirements set forth in
24 subsection (b).”

25 79. Notably, while PROMESA consistently refers to the Oversight Board’s decision to
26 reject or certify the democratically-elected Governor’s proposed Fiscal Plans under Sections
27 201(c)(3) and (d)(2) as within its “sole discretion,” PROMESA does not confer similar unfettered
28 discretion on the Oversight Board in developing and certifying its own Fiscal Plan.

1 80. Instead, if the Oversight Board rejects a Revised Fiscal Plan, Section 201(d)(2) of
 2 PROMESA instructs that the Oversight Board “shall develop and submit to the Governor and the
 3 Legislature a Fiscal Plan that satisfies the requirements set forth in subsection (b) [of Section 201],”
 4 which includes the Adequate Pension Funding Requirement.

5 81. Likewise, the mechanics of certification differ depending on whether the Oversight
 6 Board has approved and certified a Fiscal Plan proposed by the Governor—in which case Section
 7 201(e), entitled “Approval of Fiscal Plan Developed by Governor,” applies—or whether the
 8 Oversight Board has developed its own Fiscal Plan—in which case Section 201(e)(2), entitled
 9 “Deemed Approval of Fiscal Plan Developed by Oversight Board,” applies.

10 *The Governor’s Proposed and Revised Fiscal Plans*

11 82. On October 14, 2016, then-Governor of Puerto Rico Alejandro García Padilla
 12 submitted to the Oversight Board the first proposed Fiscal Plan for the Commonwealth (the “García
 13 Padilla Plan”).

14 83. The García Padilla Plan provided adequate funding for public pension systems as
 15 required by PROMESA. As the García Padilla Plan noted (page 8), it would “ensure the payment of
 16 an already meager average benefit that is only 53 percent of the average U.S. State.” It did not
 17 provide for any reductions to already-accrued vested retirement benefits, whether DB Pensions or DC
 18 Plan account balances, and set forth an actuarially-determined schedule for employer contributions to
 19 adequately fund the pension systems in order to provide the benefits that had been earned thereunder,
 20 as required by PROMESA.

21 84. The García Padilla Plan was rejected by the Oversight Board at its meeting on
 22 November 18, 2016. At that meeting, the Oversight Board adopted and communicated publically a
 23 set of five principles for the Fiscal Plan.

24 85. Following the inauguration of Governor Rossello on January 2, 2017, the Oversight
 25 Board, on January 18, 2017, sent Governor Rossello a letter, pursuant to PROMESA Section
 26 201(c)(3), that provided “recommendations for revisions to the applicable Fiscal Plan” and an
 27 opportunity to correct the García Padilla Plan through submission of a revised plan by February 28,
 28 2017. The Board’s letter stated, without any careful explanation as to precisely why, that “a

1 reduction of approximately 10% in pension costs and related expenses may be necessary, for savings
2 of \$0.2 billion [per year] by fiscal year 2019.”

3 86. Governor Rossello submitted his first Revised Fiscal Plan – a revision of the García
4 Padilla Plan – to the Oversight Board on February 28, 2017 (the “February 28 Plan”). The February
5 28 Plan proposed no funding for public pension systems *per se*, but instead provided for a “pay-as-
6 you-go model to cover remaining defined benefit obligations” from the Commonwealth’s general
7 budget.

8 87. The February 28 Plan further provided that earned accrued pension benefits would be
9 reduced by \$60 million per year beginning in 2018, for a cumulative reduction of 3% (\$563 million
10 in total by end of fiscal year 2026), by cutting 30% of all current and future retirement benefits that
11 exceed \$2000 per month. For example, the February 28 Plan stated that a vested and accrued
12 monthly pension benefit of \$3000 would be reduced to \$2700 per month by cutting 30% of the \$1000
13 in monthly benefits earned above \$2000, generating a net reduction of 10% to that hypothetical
14 pensioner’s retirement income security.

15 88. On March 9, 2017, the Oversight Board, exercising “its sole discretion” to either
16 approve or reject the Governor’s Revised Fiscal Plan, sent the Governor a letter stating that the
17 February 28 Plan did not “comply with the requirements set forth in PROMESA.” Despite noting
18 that, in the Oversight Board’s view, the February 28 Plan was “heading in the right direction” in
19 many areas, the Board again insisted—as it had at its November 18, 2016 meeting and its January 18,
20 2017 letter—on a firm, round and unexplained “10% benchmark” for pension cuts. The Oversight
21 Board also stated that it would approve a Fiscal Plan on March 13, 2017.

22 89. The Governor, in response, submitted another Revised Fiscal Plan on March 13, 2017
23 (the “March 13 Plan”). The March 13 Plan provides for nearly identical pension cuts to the February
24 28 Plan (\$541M in total, but with cuts beginning as of 2020 rather than 2018), but closed revenue and
25 cost gaps in a number of other significant areas.

26 90. At this point, pursuant to PROMESA, the Oversight Board could elect one of two
27 options under Section 201: (1) exercise “its sole discretion” and approve the democratically-elected
28 Governor’s March 13 Plan pursuant to Section 201(c)(3); or (2) “develop and submit,” without the

1 benefit of such discretion, “a Fiscal Plan that satisfies the requirements set forth in subsection (b)” of
2 Section 201 (which necessarily includes the Adequate Pension Funding Requirement applicable to
3 all Fiscal Plans) pursuant to Section 201(d)(2).

4 91. Rather than pursue either of the options legally available to it under PROMESA, the
5 Oversight Board, at a public meeting it held later on March 13, 2017, instead steered a course that
6 PROMESA does not authorize: the Board issued a “Fiscal Plan Certification” which purported to
7 “approve[] and certify[y] the Governor’s latest proposed fiscal plan pursuant to PROMESA § 201(e),
8 *as modified by*” two amendments made by the Oversight Board (emphasis added).

9 92. Despite lacking statutory authority to amend a Revised Fiscal Plan under Section 201,
10 the Oversight Board purported to amend the March 13 Plan in two ways: (1) imposing a furlough
11 program for Commonwealth employees and removal of all Commonwealth employee Christmas
12 bonuses, and (2) requiring that the 3% pension cuts already specified in the Governor’s proposed
13 fiscal plan be “supplemented to provide for progressively reduced total pension outlays by 10% by
14 fiscal year 2020” subject only to the constraint “that no member is pushed below the federal poverty
15 line as a result of the reductions.”

16 93. Notably, the federal government does not publish a “Federal Poverty Line” and
17 presumably the Oversight Board’s statement refers to the Department of Health and Human Services’
18 Annual Update of the HHS Poverty Guidelines, most recently published in Vol. 82, No. 19, p. 8831
19 of the Federal Register (January 31, 2017), which for an individual living in the contiguous United
20 States and District of Columbia is an annual income of \$12,060. A guideline is not published for
21 Puerto Rico, and the cost of living in Puerto Rico is substantially higher than in the contiguous
22 United States.

23 94. The Oversight Board’s purported “amendment” of the Governor’s Fiscal Plan that it
24 simultaneously purported to certify was contrary to PROMESA for at least two reasons. First, the
25 Board was not authorized to make “amendments” to the Governor’s March 13 Plan and then approve
26 and certify pursuant to Section 201(e)(1). Second, it violated the Adequate Pension Funding
27 Requirement.
28

The Effect of the Final Fiscal Plan

95. Under PROMESA, once a Fiscal Plan is certified, the certification requires that all governmental actions going forward comply with the Fiscal Plan, setting in motion a process under which it must be implemented and adhered to by the Commonwealth government without exception.

96. For example, Section 202 of PROMESA requires a territory's budget to comply with the Fiscal Plan, and Section 204 requires the territory's legislative acts to comply with the Fiscal Plan.

97. A certified Fiscal Plan also establishes the basis for readjustment of Commonwealth debts in the event the territory files for bankruptcy under Title III of PROMESA, entitled "ADJUSTMENT OF DEBTS." Title III establishes a procedure for a territory to declare bankruptcy similar to that of a municipality under Chapter 9 of the U.S. Bankruptcy Code.

98. Prior to PROMESA, territories of the United States were not authorized to enter bankruptcy or to pass their own debt adjustment statutes. *See Puerto Rico v. Franklin California Tax-Free Trust*, 136 S. Ct. 1938 (2016).

99. In other words, under PROMESA, as in Chapter 9 of the Bankruptcy Code, territories can now, for the first time, seek bankruptcy protection by submitting a "Reorganization Plan" that adjusts their debts. However, unlike under Chapter 9, under PROMESA the Reorganization Plan submitted by the territory is constrained in that it must "comply with" the certified Fiscal Plan, which in turn should be constrained by, among other requirements, the Adequate Pension Funding Requirement.

100. Specifically, Section 302 of PROMESA provides that in order for a territory to be a debtor under Title III entitled to seek bankruptcy relief, an Oversight Board must have "issued a certification under section 206(b) of" PROMESA for the territory. Likewise, Section 304 provides that a Title III bankruptcy case "is commenced by the filing with the district court of a petition by the Oversight Board pursuant to a determination under section 206" which, in turn, provides that before the Oversight Board can issue a restructuring certification for a territory, the territory must have "adopted a Fiscal Plan certified by the Oversight Board." In short, the Fiscal Plan determines the actions that may be taken to reorganize under the bankruptcy procedures of Title III.

1 101. Section 301(a) makes applicable to Title III a number of sections of the U.S.
2 Bankruptcy Code, including 11 U.S.C. § 362, which provides for an automatic stay of litigation
3 against the debtor.

4 102. Section 304(b) further provides that once the Commonwealth has filed a petition for a
5 Title III bankruptcy, no party may, for 120 days, file an objection to the petition alleging the petition
6 “does not meet the requirements of this title.”

7 103. Importantly, Section 312 provides that the filing of a plan of adjustment under Title
8 III, through which a territory seeks to adjust its debts with the approval of the District Court, may
9 only be filed by the Oversight Board “after the issuance of a certificate pursuant to section 104(j)”,
10 *i.e.*, following certification of a Fiscal Plan.

11 104. More critical, however, is Section 104(j) itself, which provides that the Oversight
12 Board may only certify a plan of adjustment if the plan of adjustment “is consistent with the
13 applicable certified Fiscal Plan.”

14 105. Therefore, in the event the Commonwealth were to seek bankruptcy protection under
15 Title III—an event that is imminent—the terms of the Final Fiscal Plan will establish the terms of the
16 plan of adjustment submitted by the Commonwealth in bankruptcy; any objection that the Final
17 Fiscal Plan violates Title III of PROMESA would not be considered for at least 120 days; and the
18 instant Complaint would be automatically stayed.

19 106. Further still, under Section 314(7) of PROMESA, a bankruptcy court is empowered to
20 approve a territory’s plan of adjustment only if it “is consistent with the applicable Fiscal Plan
21 certified by the Oversight Board under Title II.”

22 107. Put simply, it is anticipated that if the Commonwealth files for bankruptcy under Title
23 III, the 10% pension cuts provided for in the Final Fiscal Plan will be ‘set in stone’ with respect to
24 any bankruptcy petition or at least that will be the position taken by the Commonwealth and those
25 with adverse interests to Plaintiffs.

26 108. However, Title VI, entitled “CREDITOR COLLECTIVE ACTION,” provides a
27 process for pre-bankruptcy renegotiation and adjustment—*i.e.*, without filing a case under Title III—
28 of the billions of dollars of bond claims held against the territory.

1 **C. COMMONWEALTH DEBT, ITS TREATMENT BY THE FINAL FISCAL PLAN,**
2 **AND THE IMMINENCE OF BANKRUPTCY**

3 109. The Final Fiscal Plan did not set forth any specific cuts to debts owed to
4 Commonwealth creditors, with the sole exception of cuts to vested retirement benefits already
5 accrued for employment services already performed, such as by the Individual Plaintiffs.

6 110. In particular, the Final Fiscal Plan explicitly states that it has “not determined . . .
7 [w]hether any particular bond or debt issuance may have been improvidently issued.”

8 111. That question—whether any particular bond or debt issuance may have been
9 improvidently issued—is currently at issue in ongoing litigation involving two groups of competing
10 bondholders, *Lex Claims LLC v. Garcia Padilla* (DPR Case No. 16-2374). The General Obligation
11 Bondholder plaintiffs in that case allege that so-called “COFINA bonds”—which, according to the
12 March 13 Plan, total about \$17B in Commonwealth debt outstanding—were unlawfully issued and
13 are *ultra vires*. Meanwhile, the COFINA bondholders have intervened and counterclaimed that
14 billions of dollars in Puerto Rico General Obligation Bonds (GO Bonds) were unlawfully issued
15 because all such bonds issued since 2011 were in excess of Puerto Rico’s constitutional debt ceiling.

16 112. The question of the legality of Puerto Rico’s outstanding bond debt has also been the
17 subject of ongoing investigation by the Commonwealth itself, through its Commission for the
18 Comprehensive Audit of the Public Credit, which was created by Law 97 of 2015 and whose
19 findings, PROMESA instructs at Section 413, remain a valid source for “review and consideration . .
20 . by Puerto Rico’s government or an Oversight Board for Puerto Rico.”

21 113. According to the March 13 Plan, the Commonwealth and other entities covered by the
22 March 13 Plan had approximately \$52 billion in outstanding debt (excluding pension liabilities) as of
23 February 2017. A finding that the COFINA bonds are unlawful would render Puerto Rico solvent.

24 114. Likewise, a finding that the GO Bonds allegedly issued in excess of the constitutional
25 debt limit were, in fact, *ultra vires*, would exceed the pension savings in either the March 13 Plan or
26 the Final Fiscal Plan to the extent such a finding were to relieve the Commonwealth of obligations
27 under those Bonds.
28

1 115. In the meantime, the Commonwealth has not modified any bond claims under Title VI
2 of PROMESA.

3 116. Upon information and belief, the Commonwealth is engaging in active negotiation and
4 mediation with bond claim holders and other creditors as to the debts allegedly owed them.

5 117. The Commonwealth has not attempted to negotiate with any Plaintiff over pension
6 cuts, either individually or through an authorized representative.

7 118. The *Lex Claims* litigation, like a number of cases seeking damages from the
8 Commonwealth for liability claims that were “or could have been commenced before the enactment
9 of” PROMESA (unlike the instant Complaint), is stayed, pursuant to Section 405, until May 1, 2017.

10 119. Under PROMESA Section 405(d), the litigation stay can only be extended beyond
11 May 1 if Puerto Rico files for bankruptcy under Title III, which would trigger the automatic stay
12 under the Bankruptcy Code.

13 120. Upon information and belief, the Commonwealth would not be able to provide
14 essential services without the protection of the litigation stay, and therefore the Commonwealth will
15 be forced, and currently plans, to file for bankruptcy under Title III of PROMESA no later than May
16 1, 2017.

17 **D. THE CASE AND CONTROVERSY**

18 121. The Final Fiscal Plan proposes 10% cuts to pensions, which will result in cuts to
19 vested benefits already-accrued through completed employment services by the Individual Plaintiffs
20 and SPU’s active and retired members.

21 122. The Final Fiscal Plan’s 10% cut to pensions include, at a minimum, 30% cuts to every
22 dollar over \$2000 per month received in vested, already-accrued benefits, as well as other reductions
23 necessary to comply with the Final Fiscal Plan.

24 123. The Individual Plaintiffs, as well as numerous other Commonwealth employees and
25 retirees represented by Plaintiff SPU, receive now or will be entitled to receive a monthly retirement
26 benefits in excess of \$2000, which they earned and accrued through employment services already
27 rendered in full to the Commonwealth.
28

124. The Individual Plaintiffs, as well as numerous other Commonwealth employees and retirees represented by Plaintiff SPU who receive now or will be entitled to receive a monthly retirement benefit in excess of \$2000, will suffer serious, irreparable harm even if their benefits are only cut at the minimum level described in the February 28 Plan. They will undoubtedly suffer even more under the Final Fiscal Plan.

125. The imminence of the pension cuts set forth in the February 28 Plan alone—which will be even higher under the Final Fiscal Plan—is causing present injury to the Individual Plaintiffs, as well as numerous other Commonwealth employees and retirees represented by Plaintiff SPU, by forcing them to plan their futures to account for the reduced future retirement benefits, such as by returning to work in retirement; changing medicines to lower-cost options or foregoing treatment altogether; moving to less expensive accommodations; and even moving from the Commonwealth to the Continental United States.

126. The illegal pension cuts commanded by the Final Fiscal Plan will imminently become binding on the Commonwealth if the Final Fiscal Plan is permitted to control the Commonwealth's restructuring of its pension obligations, and the Commonwealth is preparing to file for bankruptcy in a matter of days, at which point the Commonwealth will implement the Final Fiscal Plan.

127. Serious, irreparable injury will result, in addition to the cloud of uncertainty permeating such a bankruptcy, when, following a reorganization and lifting of the automatic stay, Plaintiffs suit proceeds and the Court determines the Fiscal Plan was unlawfully promulgated and substantively violated PROMESA such that the bankruptcy filing was unauthorized and the Court overseeing it lacked jurisdiction under PROMESA.

FIRST CAUSE OF ACTION - ALL DEFENDANTS

REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (UNDER 28 U.S.C. §§ 2201 AND 2202, U.S. CONSTITUTION ARTICLE I, SECTION 10)

128. Each and every allegation set forth above is incorporated herein.

129. The Individual Plaintiffs' contractual right, and the contractual right of Plaintiff SPU's members, to already-accrued and earned retirement benefits for fully-performed past employment service is protected from impairment by the Contracts Clause, Art. I, Sec. 10 of the U.S. Constitution,

1 as is the value of their defined contribution accounts consisting of their own contributions of wages
2 and investment income earned thereon.

3 130. Defendants have substantially impaired Plaintiffs' contractual right to already-accrued
4 retirement benefits for fully-performed past employment services, and their wages contributed and
5 held in trust in their defined contribution accounts, as alleged above.

6 131. Defendants' impairment of Plaintiffs' contractual right to already-accrued retirement
7 benefits for fully-performed past employment services (and taking of Plaintiffs' property from their
8 DC plan balances) was not reasonable or necessary, for at least the following reasons:

- 9 a. The round 10% number identified for cuts to pension benefits by the Oversight
10 Board is not based on any careful, factual or numerically-driven analysis, nor the
11 result of balancing, but rather is an attempt to extract pension cuts as a matter of
12 political expediency;
- 13 b. The 10% cuts required by the Oversight Board are neither reasonable nor
14 necessary in light of the ongoing controversy as to whether other debt figures
15 allegedly owed by the Commonwealth were in fact improvidently issued and
16 therefore *ultra vires*;
- 17 c. The 10% cuts required by the Oversight Board are neither reasonable nor
18 necessary now that the Commonwealth has access to Title VI of PROMESA as a
19 means of adjusting bond claims, and certainly not prior to the conclusion of the
20 Title VI process;
- 21 d. The 10% cuts required by the Oversight Board are neither reasonable nor
22 necessary now that the Commonwealth has access to Title III of PROMESA,
23 which allows for the reorganization of Commonwealth debt subject to the
24 Adequate Pension Funding Requirement;
- 25 e. The 10% cuts required by the Oversight Board are neither reasonable nor
26 necessary now that the Commonwealth is subject to Section 201(b)(1)(C) of
27 PROMESA, the Adequate Pension Funding Requirement;
- 28

- 1 f. The 10% cuts required by the Oversight Board are neither reasonable nor
 2 necessary because they convert the Commonwealth pension promises into a pay-
 3 as-you-go system, providing no means of ensuring that the solvency of ERS will
 4 actually be enhanced by the Final Fiscal Plan and thereby violating the Contracts
 5 Clause for the reasons set forth by the Puerto Rico Supreme Court in *Asociación*
 6 *AMPR v. Sist. Retiro Maestros IV*, 2014 TSPR 58 (P.R. Apr. 11, 2014); and
 7 g. The gulf between the García Padilla Plan, the March 13 Plan, and the Final Fiscal
 8 Plan, in addition to all the reasons outlined above, make clear that Defendants have
 9 imposed a drastic impairment when several other moderate courses were available
 10 to address Puerto Rico's financial crisis.
 11 h. Defendants have other less drastic and more constitutionally-sound means of
 12 addressing the Commonwealth's fiscal standing;
 13 i. The threatened pension cuts are not necessary to the Commonwealth's purpose,
 14 which is to improve its fiscal standing.

15 132. A present case and controversy exists respecting the Plaintiffs' rights and Defendants'
 16 obligations respecting Plaintiffs' already-accrued retirement benefits for fully-performed past
 17 employment services.

18 133. Such controversy arises under the United States' Constitution and PROMESA.

19 134. This Court is able and authorized to resolve such controversy by declaratory action
 20 and, with respect to Plaintiffs' constitutional claims, injunctive relief.

21 **SECOND CAUSE OF ACTION - INDIVIDUAL DEFENDANTS**

22 **REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF** 23 **(UNDER 42 U.S.C. § 1983; U.S. CONSTITUTION ARTICLE I, SECTION 10)**

24 135. Each and every allegation set forth above is incorporated herein.

25 136. The Individual Defendants, acting under color of law, have caused the substantial
 26 impairment of the Individual Plaintiffs' contractual right, and the contractual right of Plaintiffs SPU's
 27 members, to already-accrued retirement benefits for fully-performed past employment service, as
 28 well as to the value of their defined contribution accounts consisting of their own contributions of

1 wages and investment income earned thereon, in violation of the Contracts Clause, Art. I, Sec. 10 of
2 the U.S. Constitution.

3 137. But for the Individual Defendant's actions, the Individual Plaintiffs' contractual right,
4 and the contractual right of Plaintiff SPU's members, to already-accrued retirement benefits for fully-
5 performed past employment service, as well as to the value of their defined contribution accounts
6 consisting of their own contributions of wages and investment income earned thereon, would not
7 have been impaired.

8 138. Plaintiffs seeks only declaratory and injunctive relief from the Individual Defendants.

9 **THIRD CAUSE OF ACTION - ALL DEFENDANTS**
10 **REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**
11 **(UNDER 28 U.S.C. §§ 2201 AND 2202, PUERTO RICO CONSTITUTION ARTICLE II,**
12 **SECTION 7)**

13 139. Each and every allegation set forth above is incorporated herein.

14 140. The Individual Plaintiffs' contractual right, and the contractual right of Plaintiffs
15 SPU's members, to already-accrued retirement benefits for fully-performed past employment service,
16 as well as to the value of their DC Plan Accounts consisting of their own contributions of wages and
17 investment income earned thereon, is protected from impairment by the Puerto Rico Contracts
18 Clause, Art. II, Sec. 7.

19 141. Defendants have substantially impaired Plaintiffs' contractual right to already-accrued
20 retirement benefits for fully-performed past employment services, as well as to the value of their
21 defined contribution accounts consisting of their own contributions of wages and investment income
22 earned thereon, as alleged above.

23 142. Defendants' impairment of Plaintiffs' contractual right to already-accrued retirement
24 benefits for fully-performed past employment services, as well as to the value of their defined
25 contribution accounts consisting of their own contributions of wages and investment income earned
26 thereon, was not reasonable or necessary, for at least the same reasons set forth above.

27 143. Defendants seek to reduce the balance of Plaintiffs' and SPU members' DC Plan
28 Accounts, accounts which are comprised of contributions by Plaintiffs from their earned wages.

144. A present case and controversy exists respecting the Plaintiffs' rights and Defendants' obligations respecting Plaintiffs' already-accrued retirement benefits for fully-performed past employment services, as well as the value of their defined contribution accounts consisting of their own contributions of wages and investment income earned thereon.

145. Such controversy arises under the Puerto Rico Commonwealth Constitution.

146. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

FOURTH CAUSE OF ACTION - ALL DEFENDANTS

REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (UNDER 28 U.S.C. §§ 2201 AND 2202, PUERTO RICO CONSTITUTION ARTICLE II, SECTION 7)

147. Each and every allegation set forth above is incorporated herein.

148. The Individual Plaintiffs' right, and the right of Plaintiff SPU's members, to their personal property—in the form of account balances in DC Plan Accounts and/or System 2000 RSAs, funded solely by employee contributions—is protected from deprivation without due process of law by the Puerto Rico Constitution, Art. II, Sec. 7.

149. Defendants have deprived the Individual Plaintiffs, and members of Plaintiff SPU, of their personal property right to their account balances in DC Plan Accounts and/or System 2000 RSAs without due process of law.

150. A present case and controversy exists respecting the Plaintiffs' property rights.

151. Such controversy arises under the Puerto Rico Commonwealth Constitution.

152. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

FIFTH CAUSE OF ACTION - ALL DEFENDANTS

REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF (UNDER 28 U.S.C. §§ 2201 AND 2202, PUERTO RICO CONSTITUTION ARTICLE II, SECTION 9)

153. Each and every allegation set forth above is incorporated herein.

154. The Individual Plaintiffs' right, and the right of Plaintiff SPU's members, to their personal property—in the form of account balances in DC Plan Accounts and/or System 2000 RSAs,

1 funded solely by employee contributions—is protected from being taken for public use except upon
2 payment of just compensation by the Puerto Rico Constitution, Art. II, Sec. 9.

3 155. Defendants have taken the property of Individual Plaintiffs and members of Plaintiff
4 SPU, in the form of their account balances in DC Plan Accounts and/or System 2000 RSAs, without
5 just compensation.

6 156. A present case and controversy exists respecting the Plaintiffs’ property rights.

7 157. Such controversy arises under the Puerto Rico Commonwealth Constitution.

8 158. This Court is able and authorized to resolve such controversy by declaratory action
9 and injunctive relief.

10 **SIXTH CAUSE OF ACTION - ALL DEFENDANTS**

11 **REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**
12 **(UNDER 28 U.S.C. §§ 2201 AND 2202, U.S. CONSTITUTION AMENDMENT V)**

13 159. Each and every allegation set forth above is incorporated herein.

14 160. The Due Process and Takings clauses of the Fifth Amendment of the U.S.
15 Constitution provide: “No person shall be... deprived of life, liberty, or property, without due process
16 of law; nor shall private property be taken for public use, without just compensation.”

17 161. The Individual Plaintiffs’ right, and the right of Plaintiff SPU’s members, to their
18 personal property—in the form of account balances in DC Plan Accounts and/or System 2000 RSAs,
19 funded solely by employee contributions—is protected from being deprived without due process of
20 law or taken for public use without just compensation by the United States Constitution, Amendment
21 V.

22 162. Defendants have taken the property of Individual Plaintiffs and members of Plaintiff
23 SPU, in the form of their account balances in DC Plan Accounts and/or System 2000 RSAs, without
24 due process of law or just compensation.

25 163. A present case and controversy exists respecting the Plaintiffs’ property rights.

26 164. Such controversy arises under the United States Constitution.

27 165. This Court is able and authorized to resolve such controversy by declaratory action
28 and injunctive relief.

SEVENTH CAUSE OF ACTION - INDIVIDUAL DEFENDANTS
REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 42 U.S.C. § 1983; U.S. CONSTITUTION AMENDMENT V)

166. Each and every allegation set forth above is incorporated herein.

167. The Individual Defendants, acting under color of law, have caused the deprivation without due process and taking without just compensation of the Individual Plaintiffs' right, and the right of Plaintiff SPU's members, to their personal property—in the form of account balances in DC Plan Accounts and/or System 2000 RSAs, funded solely by employee contributions—in violation of Amendment V of the U.S. Constitution.

168. But for the Individual Defendant's actions, the Individual Plaintiffs' property right, and the property right of Plaintiff SPU's members, to 100% of the account balances in their DC Plan Accounts and/or System 2000 RSA, would not have been deprived without due process or taken without just compensation.

169. Plaintiffs seeks only declaratory and injunctive relief from the Individual Defendants, namely, the confirmation and preservation of current DC Plan Account (and RSA balances therein).

EIGHTH CAUSE OF ACTION – ALL DEFENDANTS
REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 28 U.S.C. §§ 2201 AND 2202, 48 U.S.C. § 201(B)(1)(C))

170. Each and every allegation set forth above is incorporated herein.

171. PROMESA Section 201(b)(1)(C) requires that any Fiscal Plan for the Commonwealth “provide adequate funding for public pension systems.”

172. The Final Fiscal Plan does not provide adequate funding for public pension systems and therefore violates the requirements for a Fiscal Plan under PROMESA Section 201(b).

173. Because the Final Fiscal Plan was not proposed by the democratically-elected Governor of Puerto Rico and then approved by the Oversight Board under PROMESA Section 201(c)(3), the Oversight Board did not exercise “sole discretion” in purportedly approving the Final Fiscal Plan as amended, and its purported approval of the Final Fiscal Plan is therefore not entitled to any deference on the question of whether the Final Fiscal Plan satisfies the requirements of PROMESA Section 201(b).

174. Knowing that the Final Fiscal Plan violates PROMESA Section 201(b)(1)(C)—which itself constitutes reiteration and confirmation that Plaintiffs’ vested rights to retirement benefits accrued through already-performed past employment services, owed under the United States and Puerto Rico Constitutions, shall be preserved in full by PROMESA—Defendants nevertheless purported to develop, approve, and certify the Final Fiscal Plan in an effort to deprive Plaintiffs of their rights through an eventual bankruptcy case filed under Title III of PROMESA.

175. A present case and controversy exists respecting the Plaintiffs’ rights not to be subjected to a Final Fiscal Plan that unlawfully fails to provide adequate funding for the public pension systems of which the Individual Plaintiffs, and members of Plaintiff SPU, are members, and Defendants’ obligation to comply with PROMESA.

176. Such controversy arises under United States Law.

177. Plaintiffs’ rights are imminently threatened with irreparable harm by Defendant Oversight Board’s plans to file a bankruptcy case under Title III of PROMESA before May 1, under which the Final Fiscal Plan must be followed.

178. This Court is able and authorized to resolve such controversy by declaratory action and injunctive relief.

NINTH CAUSE OF ACTION - INDIVIDUAL DEFENDANTS
REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(42 U.S.C. § 1983; 48 U.S.C. § 201(B)(1)(C))

179. Each and every allegation set forth above is incorporated herein.

180. The Individual Defendants, acting under color of law, have caused the violation of Plaintiffs’ rights under PROMESA Section 201(b)(1)(C) not to be subject to a Fiscal Plan that unlawfully fails to adequately fund public pension systems of which the Individual Plaintiffs, and members of Plaintiff SPU, are participants.

181. But for the Individual Defendants’ actions, Plaintiffs’ rights under PROMESA Section 201(b)(1)(C) would not have been violated.

182. Plaintiffs seek only declaratory and injunctive relief from the Individual Defendants.

TENTH CAUSE OF ACTION – DEFENDANT OVERSIGHT BOARD
REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
(UNDER 28 U.S.C. §§ 2201 AND 2202, 48 U.S.C. § 201(B)(1)(C))

183. Each and every allegation set forth above is incorporated herein.

184. PROMESA Section 201(d) requires that the Oversight Board either approve, at its sole discretion, a Fiscal Plan developed by the democratically-elected Governor, or else “develop and submit to the Governor and the Legislature a Fiscal Plan that satisfies the requirements set forth in subsection (b)” of Section 201.

185. The Oversight Board has not approved a Fiscal Plan developed by the democratically-elected Governor.

186. The Oversight Board has not developed and approved its own Fiscal Plan for the Commonwealth.

187. Instead, the Oversight Board’s so-called “Fiscal Plan Certification” purported to “approve and certify the Governor’s latest proposed Fiscal Plan, as modified by [two] amendments.”

188. PROMESA does not contemplate or allow the Oversight Board to approve and certify a Fiscal Plan proposed by the democratically-elected Governor subject to certain amendments; instead, the Oversight Board must either approve and certify the Governor’s Fiscal Plan as proposed by the Governor, or else the Oversight Board must develop its own Fiscal Plan.

189. Therefore, the Final Fiscal Plan has not been developed, approved, or certified under PROMESA as a matter of law.

190. Aware that the Final Fiscal Plan and the “Fiscal Plan Certification” violated the procedures for the development, approval, and certification of a Fiscal Plan required by PROMESA, as well as PROMESA’s confirmation that Plaintiffs’ rights to their accrued, vested retirement benefits for already-performed employment services should be maintained and protected in full through adequate funding, Defendant Oversight Board nevertheless purported to develop, approve, and/or certify the Final Fiscal Plan in an effort to impair Plaintiffs’ rights through an eventual bankruptcy case filed under Title III of PROMESA.

191. A present case and controversy exists respecting the Individual Plaintiffs’ and SPU’s members’ rights not to be subjected to a Final Fiscal Plan that unlawfully fails to provide adequate

1 funding for the public pension systems of which the Individual Plaintiffs, and members of Plaintiff
 2 SPU, are participants, and Defendants' obligations to comply with the development, approval, and
 3 certification procedures set forth by PROMESA with respect to a Fiscal Plan.

4 192. Such controversy arises under United States Law.

5 193. Plaintiffs' rights are imminently threatened with irreparable harm by Defendants'
 6 plans to file a bankruptcy case under Title III of PROMESA, under which the Final Fiscal Plan must
 7 be followed.

8 194. This Court is able and authorized to resolve such controversy by declaratory action
 9 and injunctive relief.

10 **ELEVENTH CAUSE OF ACTION - INDIVIDUAL DEFENDANTS**
 11 **REQUEST FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**
 12 **(43 U.S.C. § 1983; 48 U.S.C. § 201(B)(1)(C))**

13 195. Each and every allegation set forth above is incorporated herein.

14 196. The Individual Defendants, acting under color of law, have caused the violation of
 15 Plaintiffs' rights under PROMESA Section 201(d) not to be subject to a Fiscal Plan that unlawfully
 16 purports to have been developed by the Governor and approved by the Oversight Board when it was
 17 not.

18 197. But for the Individual Defendant's actions, Plaintiffs' rights under PROMESA Section
 19 201(d) would not have been violated.

20 198. Plaintiffs seeks only declaratory and injunctive relief from the Individual Defendants.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for the following relief:

23 1. A Declaratory Judgment that the Final Fiscal Plan unconstitutionally impaired
 24 Plaintiffs' accrued, vested contractual right to retirement benefits based on already-performed
 25 employment services, as well as to the value of their defined contribution accounts consisting of their
 26 own contributions of wages and investment income earned thereon;
 27
 28

1 2. A Declaratory Judgment that the Final Fiscal Plan unconstitutionally deprived without
2 due process and took without just compensation Plaintiffs' property rights to 100% of individual DC
3 Plan Account and System 2000 RSA balances, including all interest earned thereon;

4 3. A Declaratory Judgment that the Final Fiscal Plan violates the requirement set forth at
5 48 U.S.C. § 2141(b)(1)(C) that any Fiscal Plan adequately fund public pensions systems.

6 4. A Declaratory Judgment that the Final Fiscal Plan was not lawfully developed,
7 approved, and certified under 48 U.S.C. §§ 2141(c) or 2141(d).

8 5. A Permanent Injunction prohibiting Defendants and their affiliates, agents, employees,
9 and attorneys, and any and all other persons in active concert or participation with them, from
10 implementing the Final Fiscal Plan, including but not limited to enjoining any and all Defendants
11 from filing a petition for relief under Title III of PROMESA until such time as the violations in the
12 Final Fiscal Plan are cured as determined by this Court;

13 6. A Permanent Injunction prohibiting Defendants and their affiliates, agents, employees,
14 and attorneys, and any and all other persons in active concert or participation with them, from
15 applying the Final Fiscal Plan in a manner that deprives or takes without just compensation Plaintiffs'
16 property rights to 100% of individual DC Plan Account and System 2000 RSA balances, including
17 interest earned thereon, including but not limited to enjoining any and all Defendants from filing a
18 petition for relief under Title III of PROMESA until such time as the violations in the Final Fiscal
19 Plan are cured as determined by this Court;

20 7. A Permanent Injunction prohibiting Defendants and their affiliates, agents, employees,
21 and attorneys, and any and all other persons in active concert or participation with them, from
22 applying the Final Fiscal Plan in any manner, unless and until it is altered to provide adequate
23 funding for public pension systems as determined by this Court, including but not limited to
24 enjoining any and all Defendants from filing a petition for relief under Title III of PROMESA;

25 8. A Permanent Injunction prohibiting Defendants and their affiliates, agents, employees,
26 and attorneys, and any and all other persons in active concert or participation with them, from
27 applying the Final Fiscal Plan in any manner whatsoever, including but not limited to enjoining any
28

1 and all Defendants from filing a petition for relief under Title III of PROMESA in violation of
2 Plaintiffs' constitutional rights;

3 9. A Temporary Restraining Order and Preliminary Injunction that maintains the *status*
4 *quo* and enjoins implementing the Final Fiscal Plan, enacting budgets that provide for reduced
5 pension benefits pursuant to the Final Fiscal Plan, and enjoins Defendants from filing a Plan of
6 Reorganization or otherwise invoking Title III of PROMESA based on the Final Fiscal Plan;

7 10. For an award of fees and costs expended in this suit, including costs awardable
8 pursuant to 42 U.S.C. § 1988(b); and

9 11. Such other relief as the Court deems just and proper.

10 Respectfully submitted, in San Juan, Puerto Rico, this 12th day of April 2017.

11
12 /s/Manuel A. Rodríguez Banchs
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23 *Applications for Admission *Pro hac vice* has been filed today under a separate cover.
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